

**Division of Accounting
Payroll Compliance Group**

**Bulletin # 2012_004
Meal Provisions**

INTRODUCTION

Based on findings from the Statewide Compliance Examination of non-wage fringe benefits, the Division of Accounting Payroll Compliance Group (PCG) is publishing guidance on appropriate tax treatment of Meal provisions.

This bulletin covers tax implications associated with non-cash fringe benefits. Please contact your HR office for your Organizations' policy regarding meal reimbursements and allowances.

FACTS

Fringe benefits include any compensation other than cash wages. The general rule is that the compensation is taxable; however, the Internal Revenue Code provides exclusions for numerous forms of non-cash compensation provided to employees including meals. Taxation rules vary according to whether the provision of meals or meal allowances is a working condition fringe benefit.

DEFINITIONS

- **De Minimis Fringe Benefit** – any property or service whose value is so small as to make accounting for it unreasonable or administratively impractical.
 - De minimis fringe benefits are excluded from taxable income.
 - Federal and State regulations do not set a defined amount for the nominal value.
 - Items of little individual value are not de minimis if given frequently to the same person.
- **Accountable Plan** – a plan that meets the requirements as specified by the IRS.
 - Reimbursed expenses paid in connection with the performance of services for the employer.
 - The employee substantiates the reimbursed expense to the employer.
 - The employee returns amounts paid by the employer that exceed substantiated expenses.
- **Nonaccountable Plan** – a payment or reimbursement arrangement that does not meet requirements of an accountable plan – payments under such plans are wages and subject to withholding.
- **In-Kind** – payments made in something other than cash.

FINDINGS

To determine if meal reimbursements are excludable from wages, employers must consider general fringe benefit rules as well as regulations included in several sections of the Internal Revenue Code.

REGULATORY REFERENCES

In rendering this opinion, we reviewed the applicable Code, Regulations, and laws as cited below.

Internal Revenue Service (IRS)

Internal Revenue Code (IRC) §119

Federal law takes precedence over a state statute or an employment or union contract in determining the Federal tax liability for furnished meals. The actual facts and circumstances and the requirements of IRC §119 determine the liability for Federal income, social security and Medicare taxes.

The fair market value of meals furnished to an employee by an employer may be nontaxable to the employee. IRC §119 provides an exclusion for meals under certain circumstances.

Certain meal money benefits are considered to be de minimis fringes. The regulation sets out three conditions that must be fulfilled in order for such benefits to constitute de minimis fringes:

IRC §132(e)(1) –

- With the exception of certain meal money benefits, discussed below, the provision of any cash or cash equivalent benefit is never excludable as a de minimis fringe because it can reasonably and practicably be accounted for.
 - If meal reimbursements are provided as part of a company policy or union contract, they are not excludable as de minimis benefits, because the benefit is required and is not occasional. The employer would normally have the opportunity to set up the administrative procedures for reporting the benefit, so accounting for it does not meet the “administratively impracticable” standard for de minimis benefits.
 - In no event shall meal money calculated on the basis of the number of hours worked be considered a de minimis fringe benefit (i.e., \$1.00 per hour for each hour over eight hours).
- ***De Minimis Meals – IRS Publication 15b – Employer’s Tax Guide to Fringe Benefits***
 - Infrequent meals of minimal value may be excludable as a de minimis fringe benefit if accounting for them would be unreasonable or administratively impracticable. Examples:
 - Coffee, doughnuts, or soft drinks.
 - Occasional parties or picnics for employees and their guests.
 - Occasional meals provided for overtime work that requires an extension of the employee’s normal work schedule.
 - Meals provided on the employer’s premises or meal money expended for meals that are consumed during the overtime period, satisfy this condition.
- ***Meals on Business Premises – Reg. §1.119-1(a)(2) and (e) ; IRC §119(b)(3)***
 - The value of meals furnished to an employee is excludable if they meet the following tests:
 - Furnished on business premises (generally where the employee performs most duties).
 - Furnished for employer convenience.
 - Provided for a substantial “noncompensatory” reason.
 - Workers need to be on call for emergencies during the lunch period.
 - Must have evidence that emergencies occur.
 - Nature of business (not just a preference) requires short lunch period.
 - Eating facilities are not available in the area of work.
 - Meals furnished to cafeteria staff before, during or after work hours.

- If more than half of the employees are furnished meals for employer convenience, treat all meals furnished to employees on premises as furnished for your convenience.
 - Meals are furnished immediately after working hours because the employee's duties prevented him or her from obtaining a meal during working hours.
 - The intention is not to provide additional pay for the employee.
 - Meals provided with a charge may or may not be considered for the "convenience of the employer." If there is a mandatory charge or deduction from the employee's pay for meals, gross income to the employee is reduced by this amount.
 - Contract or Collective Bargaining Agreement language is not a consideration.
 - A written statement that meals are furnished for your convenience is not sufficient.
 - Exclusion does not apply if employees may choose to receive additional pay instead of meals.
- **In-Kind – IRC§119**
 - "In-Kind" meals, are meals provided on-site for the benefit of the employer (not taxable).
 - Meal allowances (cash or cash equivalent) for meals provided on-site, for the benefit of the employer, are taxable; known as "Wages In-Kind."
- **Meals Furnished With a Charge – IRC§119(a)(2); IRC §119(b)(3)**
 - If an employer charges an employee a fixed amount for a meal, regardless of whether the employee takes the meal, the employee's taxable wages are reduced by the amount of the charge.
 - If *not* provided for the convenience of the employer, the FMV of meal is then added to the wages. Generally, the FMV of the meal will be the amount charged to the employee for the meal, resulting in no net tax effect.
- **Meals *Not* Provided for the Convenience of Employer – Reg. §1.119-1(a)(2)**
 - Meals provided before/after working hours are not for the convenience of employer, unless:
 - Provided for a restaurant or cafeteria employee, or
 - Duties prevent the employee from taking a meal until immediately after work hours.
- **Optional Meal for Purchase – IRC§119(b)(3)**
 - An optional meal is generally not considered as "provided for the convenience of the employer." If an employer provides a meal that an employee may choose to purchase, the employee's taxable wages are *not* reduced by the amount the employee pays for the meal. If the meal is not for the convenience of the employer, the FMV of the meal, less any amount charged by the employer, is included in the employee's wages.
- **Substantiating Employee Meal Expense Reimbursements**
 - Meal expense reimbursements or allowances must meet the accountable plan (see Definitions above) rules in order to be excludable from wages.

DELAWARE CODE

- Title 29, Chapter 51 General Provisions:
 - § 5112. Employees not to be supplied with, nor reimbursed for, food consumed during working hours; exceptions.
 - (a) No full-time employee of the State whose salary is paid by the State shall receive any additional stipend for the purchase of food, be supplied with food or be reimbursed for food that was consumed during normal working hours within the State.
 - (b) Subsection (a) of this section shall not apply to:

- (1) Employees of state agencies who regularly receive wages in-kind in addition to their salaries;
- (2) Employees of the Delaware Economic Development Office;
- (3) The expenditures of funds for food supplies as part of employee recognition activities established pursuant to § 5950 of this title;
- (4) The expenditures of funds for food supplied as part of an agency training function, such as a retreat or workshop, held away from the agency's home location.
- (5) State Police recruits during the period of their training; or
- (6) Circumstances where approval has been granted by the Director of the Office of Management and Budget and the Controller General.

OTHER

- Refer to the Office of Management and Budget (OMB), *Meal Reimbursement Policy* provides guidelines for state agencies for the reimbursement of meals when working overtime. http://intranet.omb.state.de.us/policies/documents/omb_meal_reimb_032410.pdf
- Refer to the OMB *Travel Policy* for state agencies for reimbursement of meal expenses incurred during out-of-state travel.
http://intranet.omb.state.de.us/policies/documents/omb_travel_policy_070111.pdf
- Refer to the Budget and Accounting Policy Manual, Chapter 11, *Travel Policy*, for the policy regarding reimbursement of meal expenses incurred during out-of-state travel.
<http://budget.delaware.gov/accounting-manual/chapter11v43.pdf>

TAX ADVICE DISCLAIMER

Although the opinion provided here is presented in good faith and believed to be correct, it is General in nature and is not intended as tax advice. Furthermore, the facts and regulatory references applicable to this scenario may not be applicable to or suitable for other similar scenarios that may require consideration of other factors.

Additionally, personnel of the Department of Finance do not advise on personal income tax requirements or issues. Use of any information provided by PCG is for general information only and does not represent personal tax advice either express or implied. State employees are encouraged to seek professional tax advice for personal income tax questions and assistance.



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